



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

FRANKLIN POLICE DEPARTMENT, STATE
EMPLOYEES ASSOCIATION OF N.H., INC.

Complainant

v.

CITY OF FRANKLIN

Respondent

CASE NO. S-0313:10

DECISION NO. 84-76

APPEARANCES

Representing Franklin Police, SEA

William Briggs, Esq.
Ward Freeman

Representing City of Franklin

Paul Fitzgerald, Esq.
Frank Edmunds
John E. Sims, Jr.

BACKGROUND

On March 22, 1984, the State Employees Association of N.H., Inc. (Association) on behalf of certain employees of the Franklin Police Department filed a complaint of unfair labor practices against the City of Franklin (City). In this case the collective bargaining agreement covers the period January 1, 1983 to December 31, 1983 with the State Employees Association of N.H., Inc. as the exclusive bargaining agent for all regular full-time police officers of the City of Franklin below the rank of Sergeant. Newly hired officers serve as probationary employees for a period of (12) twelve months and are not covered by the collective bargaining agreement during this time.

Officer Maglio became employed by the City of Franklin on August 1, 1982. On August 17, 1982 Mr. Maglio signed an employment agreement with the City which required Mr. Maglio to attend a period of training at the New Hampshire Police Academy and also required Mr. Maglio to repay the City for the costs associated with his training should he leave the Franklin Police Department, for any reason, during the first two (2) years of his employment. Mr. Maglio resigned his position, effective December 11, 1983 and received a bill from the City (on December 3, 1983) for \$458.17 (note: Mr. Maglio came under the collective bargaining agreement on August 1, 1983 at the expiration of his probationary period). The Association argues that the requirement to repay the City is a "condition of employment" under RSA 273-A:1, and as such cannot be unilaterally determined and that any such behavior constitutes an unfair labor practice under RSA 273-A:5, I (h) and (i) in that the existing contract contains no such provision.

The Association later filed an amendment to their petition to include information about contacts between the Association's representative and the City's attorney and the Local Chapter President and the Police Chief relative to a request to rescind Mr. Maglio's contract requiring him to repay the city. The City denied the request to rescind.

In its answer, the City of Franklin, by its attorneys, agreed with the basic facts of the case as presented in the complaint but disagreed with the Association's argument. The City contends that the contract requiring repayment of certain costs, should the officer leave the department before two years has expired, is in reality a "condition of hire" and not a "condition of employment" and as such is not a mandatory subject of negotiation and is "separate and apart from such protection as benefits that may be offered through the collective bargaining agreement." The City further argues that the Association was aware of this practice before the most recent contract negotiations and never raised the issue and thus has waived any right to complain now. The City also argues that the Association has failed to exhaust administrative remedies by not properly following the grievance procedure to its conclusion. In addition, the City denied the allegations in the Association's amendment to its complaint and asked the Board to deny modification of the original petition.

A hearing was held on September 6, 1984 at the PELRB office in Concord, New Hampshire.

FINDINGS OF FACT AND RULINGS OF LAW

At hearing the Board determined that the case was legitimately being heard since the question of mandatory subject for bargaining is properly within PELRB jurisdiction under RSA 273-A. PELRB finds the City was properly trying to cut down on costs incurred in training police officers, which training is required by state law, if the officers leave the department relatively "soon" after such training.

The PELRB finds that officers during the probationary period are not members of the bargaining unit and therefore are not covered by the collective bargaining agreement.

However, once the probationary period has ended, relevant officers are covered by the collective bargaining agreement and cannot waive the exclusive rights of the Association to represent them in negotiations.

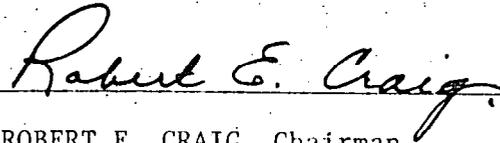
On the question of the re-payment of costs incurred for training should officers leave the department "soon" after such training, the PELRB finds that this "condition of hire" would subsequently effect the "wages, hours and other conditions of employment" and as such must be subject to collective bargaining for those who are members of the bargaining unit. In short, this "condition of hire" becomes a "condition(s) of employment" when that person becomes covered by the collective bargaining agreement and as such must be subject to the collective bargaining process.

DECISION

The PELRB declines to find an ULP in this case for the following reasons:

1. No breach of collective bargaining agreement;
2. Not unilateral change in "conditions of employment";

3. In future negotiations, that part of "pay-back" provision beyond the probationary period is a mandatory subject of negotiations.



ROBERT E. CRAIG, Chairman

Signed this 12th day of October, 1984.

By unanimous vote. Robert E. Craig, Chairman, presiding, members Russell F. Hilliard, Seymour Osman and Richard W. Roulx present and voting. Also present, Executive Director, Evelyn C. LeBrun.